Hot Topics in Broker Risk Reduction

Katie Johnson
General Counsel & Chief Member Experience Officer
NATIONAL ASSOCIATION OF REALTORS®

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Hot Topic Issues

- COVID-19 Guidance
- Disaster Preparedness Plans
- ADA Website Accessibility
- Fair Housing
- NAR Litigation Update

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COVID-19 GUIDING PRINCIPLES

COMPLY

Follow CDC recommendations. Adhere to state and local requirements.

COMMUNICATE

What you're doing to help keep agents and clients safe.

CHECKOUT

Checkout NAR's Re-Entry checklist:
https://www.nar.realtor/covid-19-workplace-re-entry-checklist

CONTINUE

Best practices like virtual meetings, limiting in-person interactions and using e-solutions.

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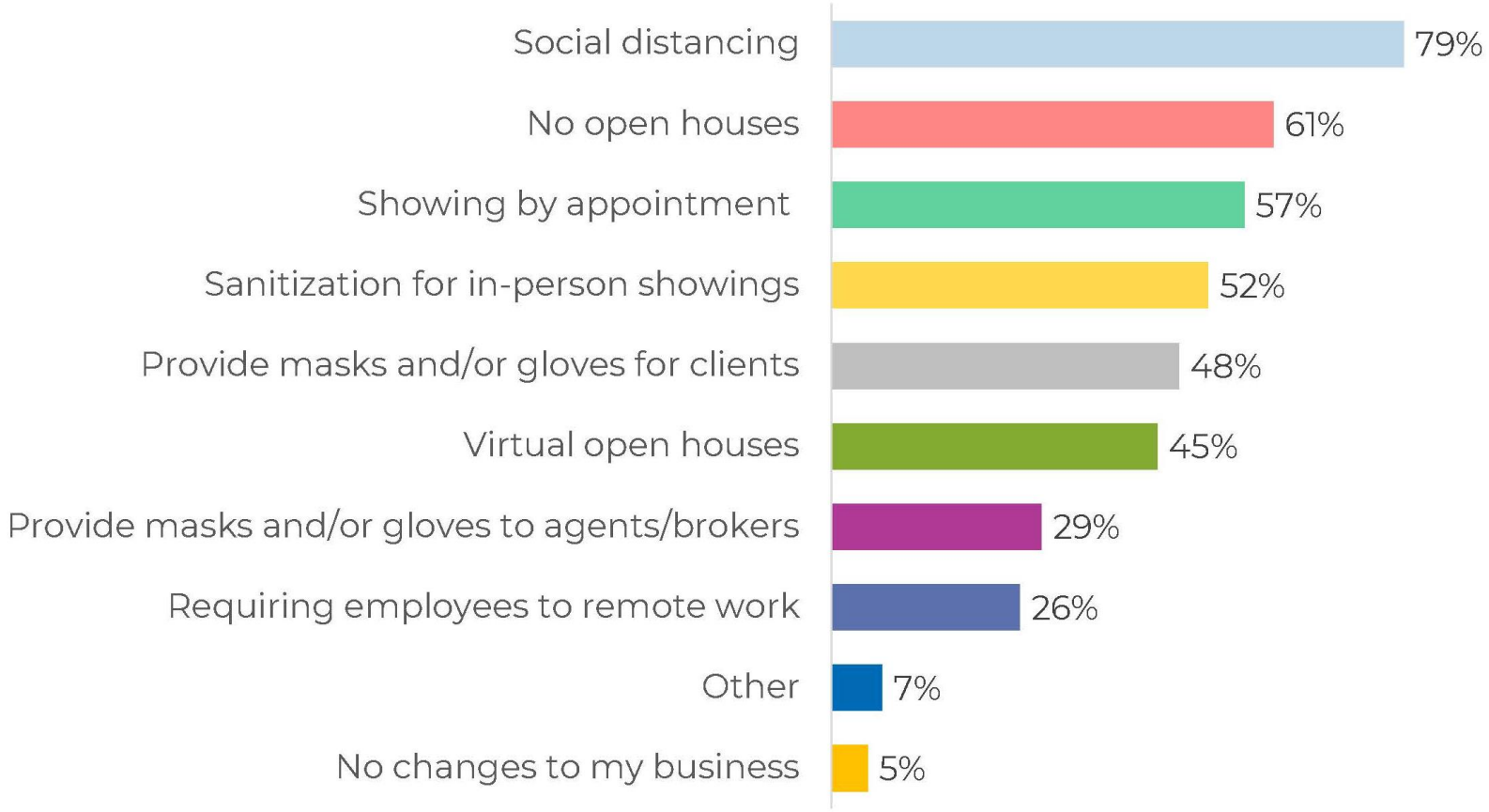
Real Estate Brokerage Operations

How are you changing your real estate business practices to adopt to new federal, state, and/or local regulations and guidance on COVID-19?



June 2020 Federal Issues Priority Survey

Prepared by NAR Research

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SHOWING GUIDANCE

NAR SHOWING GUIDANCE

- *Follows CDC Guidelines*
- *Best practices for mitigating risk*

COVID-19: SHOWING GUIDANCE DURING REOPENING

May 13, 2020

As restrictions begin to ease around the country, NAR provides this guidance to assist brokers in formulating guidelines for their businesses and agents in preparation for business in the new normal. NAR continues to encourage members to use virtual showings and limit in-person activity in all other aspects of the transaction as much as possible during the pendency of this crisis, even where in-person showings are allowable by state or local order.

This is general guidance only. Be sure to consult legal counsel, public health information, all applicable executive orders, and federal, state, and local government and agency guidance.

BEFORE CONDUCTING IN-PERSON SHOWINGS

- Check state and local executive orders to confirm the permissibility, and any specific requirements, of conducting in-person showings.
- Encourage buyers to narrow their property search through photos, virtual tours, and leveraging other technology to reduce the number of in-person showings.
- Consider adopting a policy of asking all buyers for a pre-qualification letter to limit in-person showings only to qualified and serious buyers.
- Be familiar with state and local restrictions based on whether a property is vacant, owner-occupied, or tenant-occupied, and consider implementing different precautions for occupied properties versus vacant properties.
- Discuss with a seller the precautions that will be taken when showing their property, and adhere to any specific requirements requested by sellers showing the property.
- Require property showings by appointment, in lieu of open houses, to reduce the number of persons in a property at any given time.
- Request both the seller and potential buyers to self-disclose whether they have COVID-19 or exhibit any symptoms. However, note that COVID-19 is also spread by individuals who are asymptomatic.
- Be aware of any state or local restrictions on the number of people who may be present at the showing, and discourage non-essential parties from attending the showing.

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Chicago, IL 60611-4087
(800) 874-6500
www.nar.realtor

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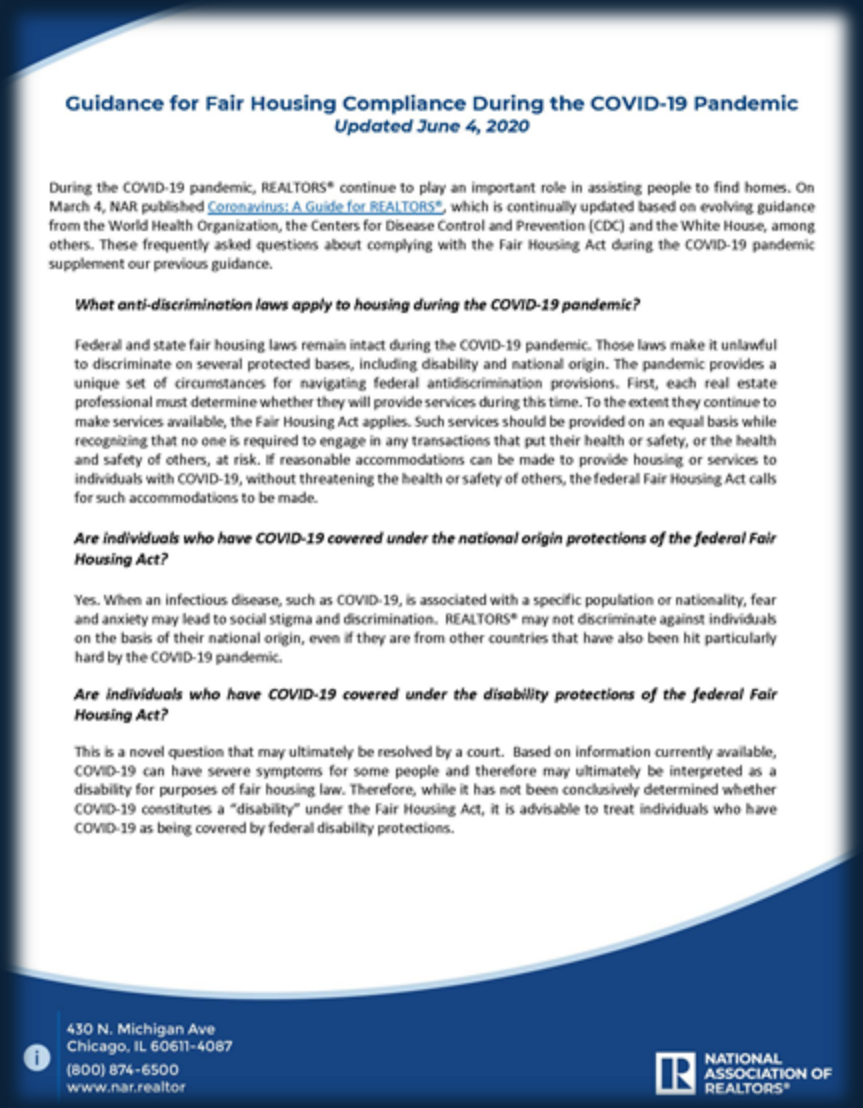
FAIR HOUSING GUIDANCE

Is COVID-19 a disability?



Guidance for Fair Housing Compliance During the COVID-19 Pandemic

Updated June 4, 2020

During the COVID-19 pandemic, REALTORS® continue to play an important role in assisting people to find homes. On March 4, NAR published Coronavirus: A Guide for REALTORS®, which is continually updated based on evolving guidance from the World Health Organization, the Centers for Disease Control and Prevention (CDC) and the White House, among others. These frequently asked questions about complying with the Fair Housing Act during the COVID-19 pandemic supplement our previous guidance.

What anti-discrimination laws apply to housing during the COVID-19 pandemic?

Federal and state fair housing laws remain intact during the COVID-19 pandemic. Those laws make it unlawful to discriminate on several protected bases, including disability and national origin. The pandemic provides a unique set of circumstances for navigating federal antidiscrimination provisions. First, each real estate professional must determine whether they will provide services during this time. To the extent they continue to make services available, the Fair Housing Act applies. Such services should be provided on an equal basis while recognizing that no one is required to engage in any transactions that put their health or safety, or the health and safety of others, at risk. If reasonable accommodations can be made to provide housing or services to individuals with COVID-19, without threatening the health or safety of others, the federal Fair Housing Act calls for such accommodations to be made.

Are individuals who have COVID-19 covered under the national origin protections of the federal Fair Housing Act?

Yes. When an infectious disease, such as COVID-19, is associated with a specific population or nationality, fear and anxiety may lead to social stigma and discrimination. REALTORS® may not discriminate against individuals on the basis of their national origin, even if they are from other countries that have also been hit particularly hard by the COVID-19 pandemic.

Are individuals who have COVID-19 covered under the disability protections of the federal Fair Housing Act?

This is a novel question that may ultimately be resolved by a court. Based on information currently available, COVID-19 can have severe symptoms for some people and therefore may ultimately be interpreted as a disability for purposes of fair housing law. Therefore, while it has not been conclusively determined whether COVID-19 constitutes a "disability" under the Fair Housing Act, it is advisable to treat individuals who have COVID-19 as being covered by federal disability protections.

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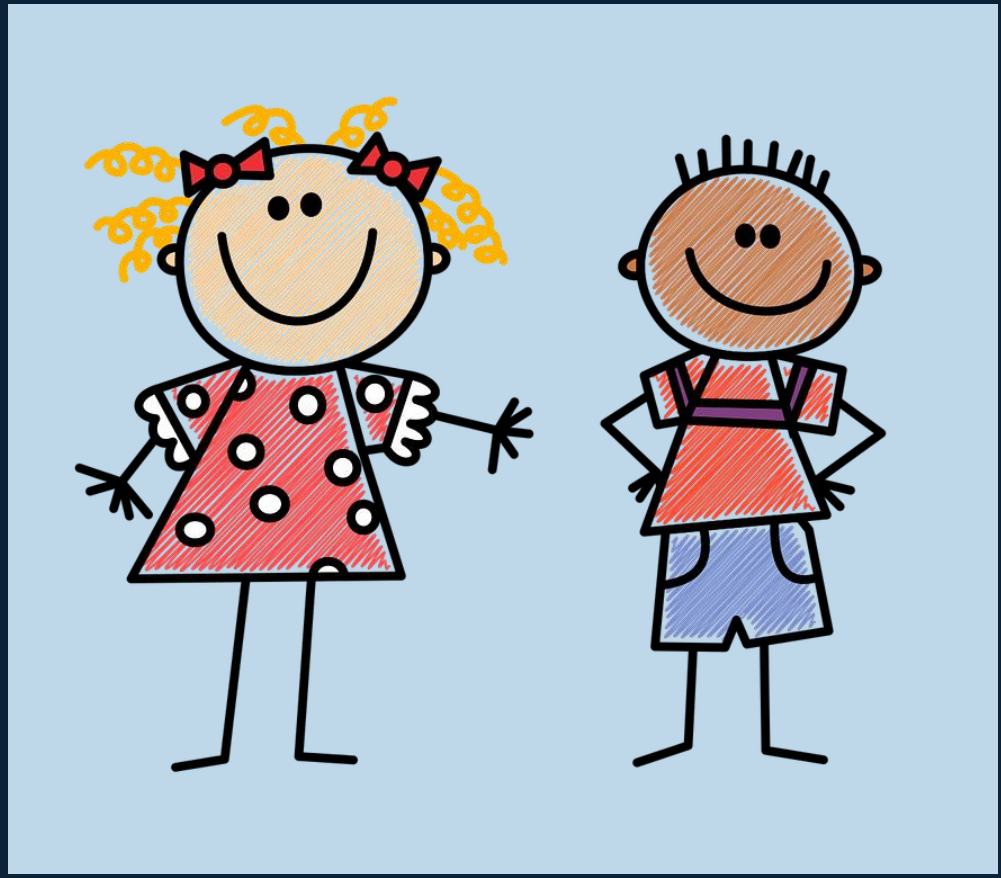
FAIR HOUSING GUIDANCE

May I restrict children at an in-person showing?



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FAIR HOUSING GUIDANCE

May I ask if a client has or has been exposed to COVID-19?

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FAIR HOUSING GUIDANCE

What's a reasonable accommodation for COVID-19?

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ADVOCATING FOR REALTORS®

SBA LOANS

Eligibility for independent contractors and reasonable forgiveness process.

PUA

Eligibility for independent contractors.

Rental Assistance & Evictions

Ensure that property owners are also protected when tenants are unable to pay rent.

RON

Remote Online Notarization as a safe and legal option for eClosings.

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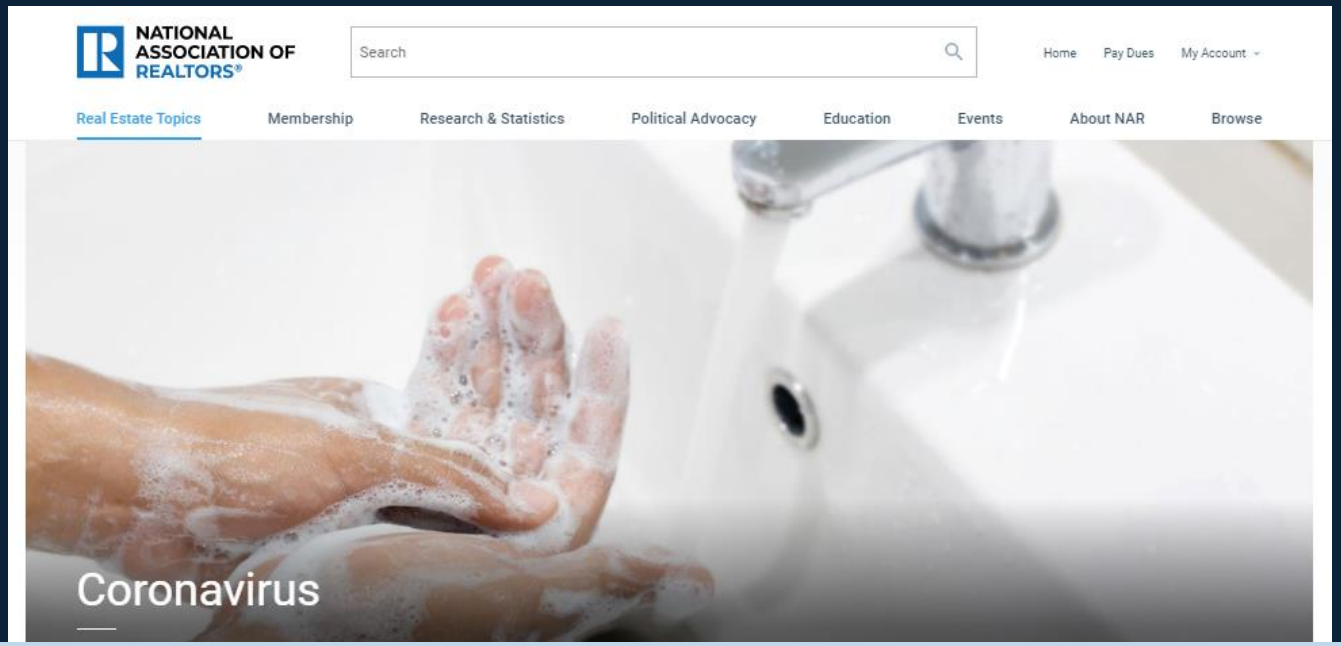
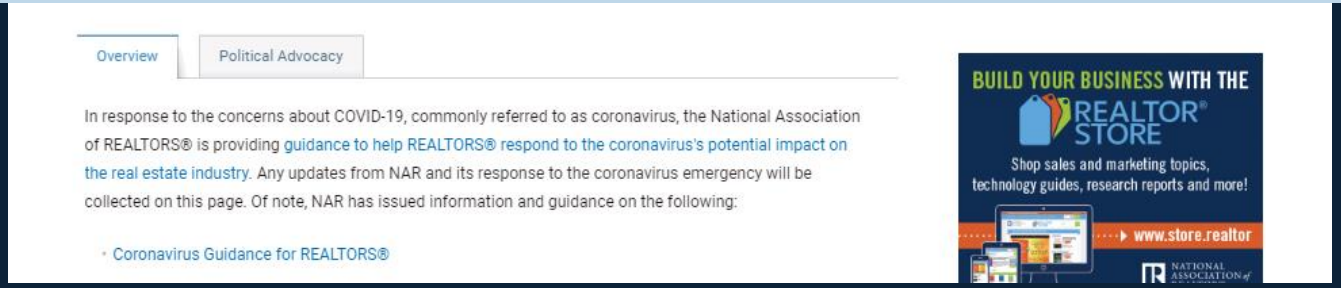
NAR RESOURCES



nar.realtor/coronavirus



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DISASTER PREPAREDNESS PLANS

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WHAT DID WE LEARN FROM COVID-19?

- ✓ Clear communication.
- ✓ State and federal guidance changed quickly.
- ✓ Must be prepared for remote work.
- ✓ Disaster preparedness plans will help!

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BENEFITS

- ✓ Business Continuity
- ✓ Faster Recovery
- ✓ Ensure Safety of Employees

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BEFORE THE DISASTER

Identify Risks and Mitigation Strategies

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COMMON RISKS AND MITIGATION STRATEGIES

RISK	STRATEGY
Safety of Employees and Independent Contractors	Emergency Supplies Check-in Policy
Damage to Space	Policy for Working Remotely

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COMMON RISKS AND MITIGATION STRATEGIES

RISK	STRATEGY
Loss of Systems	Implement 3-2-1 Backup Plan
	Firewall & Anti-Virus Software
Financial Obligations	Establish Emergency Reserves
	Commission checks?
	Bills?

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COMMON RISKS AND MITIGATION STRATEGIES

RISK	STRATEGY
Loss of Suppliers	Identify Backups Now
Injury to Executives	Include Succession Plan

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COMMON RISKS AND MITIGATION STRATEGIES

RISK	STRATEGY
Pending Transactions	Communication. Review contract. Review state law. Document any damage. Check in with lenders.

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BEFORE THE DISASTER

Put It In Writing!

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BEFORE THE DISASTER

Distribute Plan & Provide Training

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WHEN DISASTER STRIKES

- ✓ Follow your plan
- ✓ Provide relevant and up-to-date information

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SAMPLE PLANS AND CHECKLISTS

READY.GOV

Natural disasters

SBA.GOV

Cyber-Security plan and Checklists for other disasters

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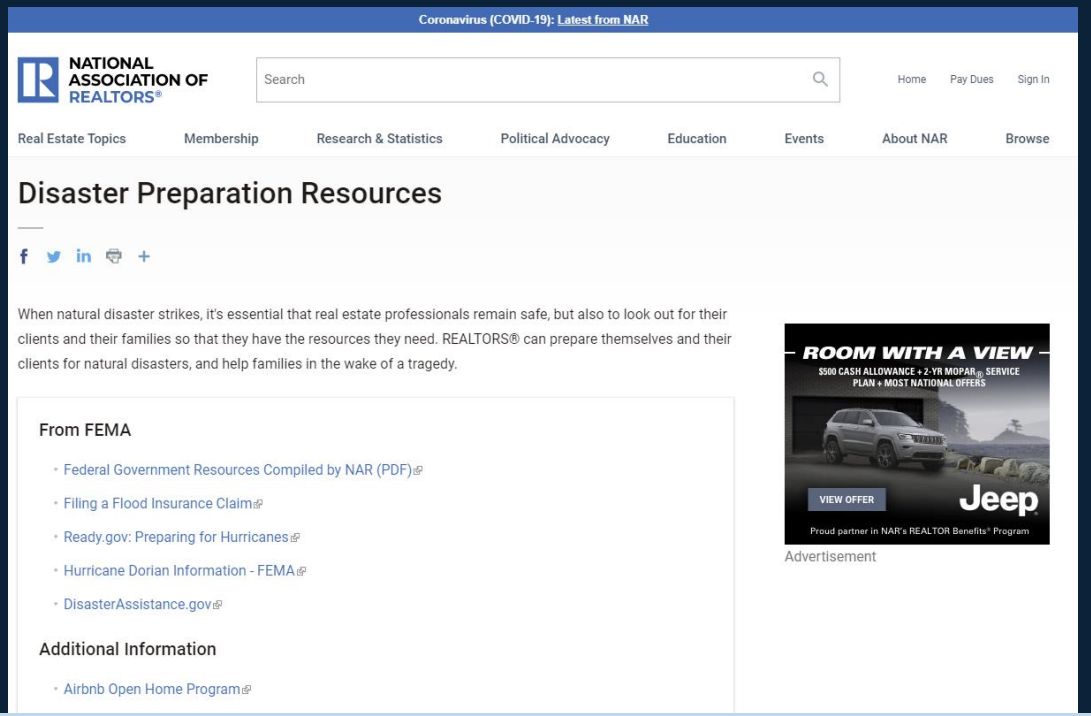
NAR RESOURCES



https://www.nar.realtor/disaster-preparation-resources

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ADA WEBSITE ACCESIBILITY

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WEBSITE ACCESSIBILITY

Issue:

Is a website a place of public accommodation that must comply with the ADA?

WEBSITE ACCESSIBILITY

Adaptive and Assistive Technology

Presentation of Content

Web Navigation Tools

WHAT DOES THE DOJ SAY?

All websites should be accessible.

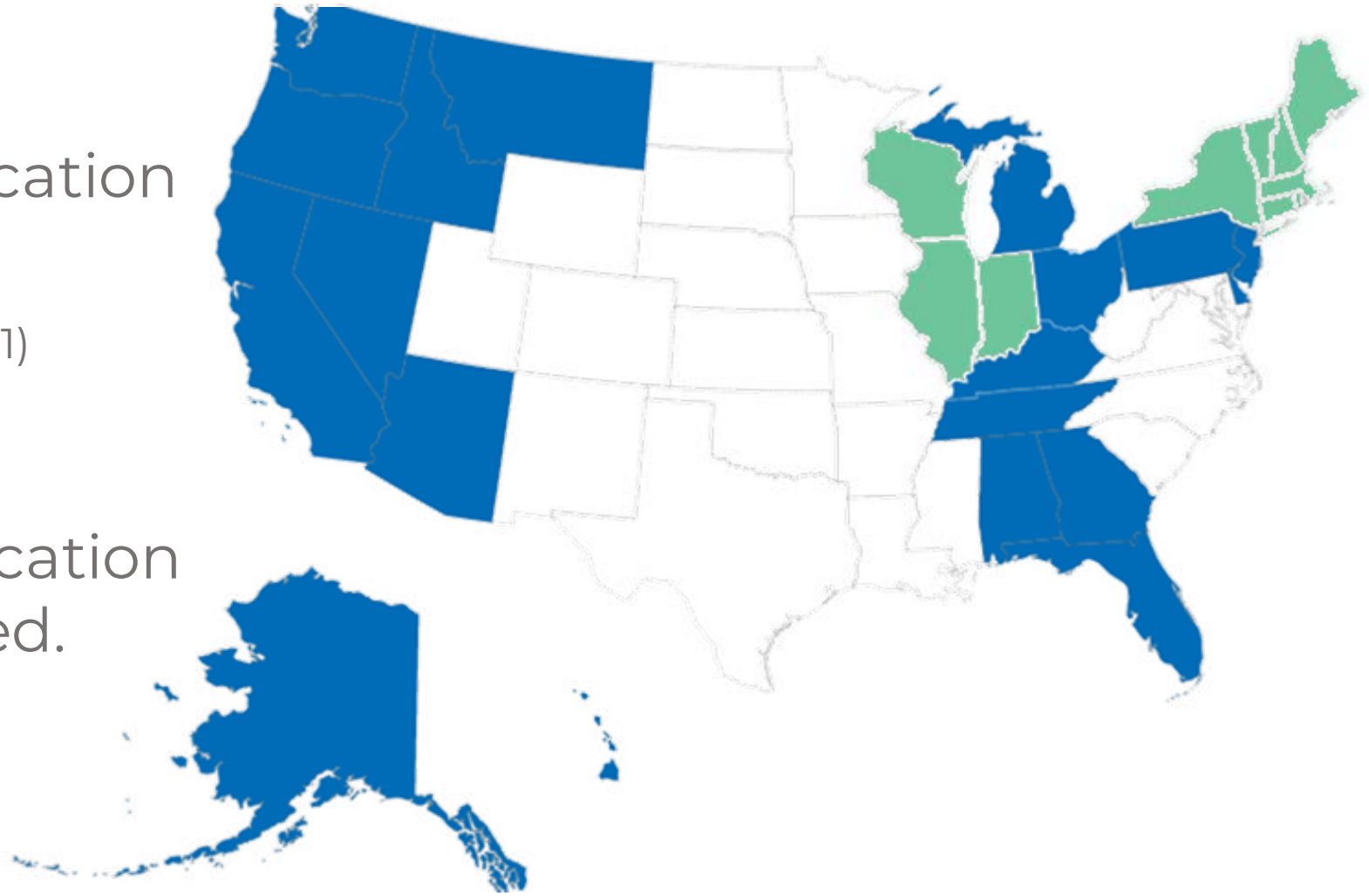
WHAT DO THE COURTS SAY?

Physical location required.

(Circuits 3, 6, 9, 11)

Physical location not required.

(Circuits 1, 2, 7)



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WHAT DO THE COURTS SAY?

From 2017 to 2018, there was a 177% increase *in website accessibility lawsuit filings.*

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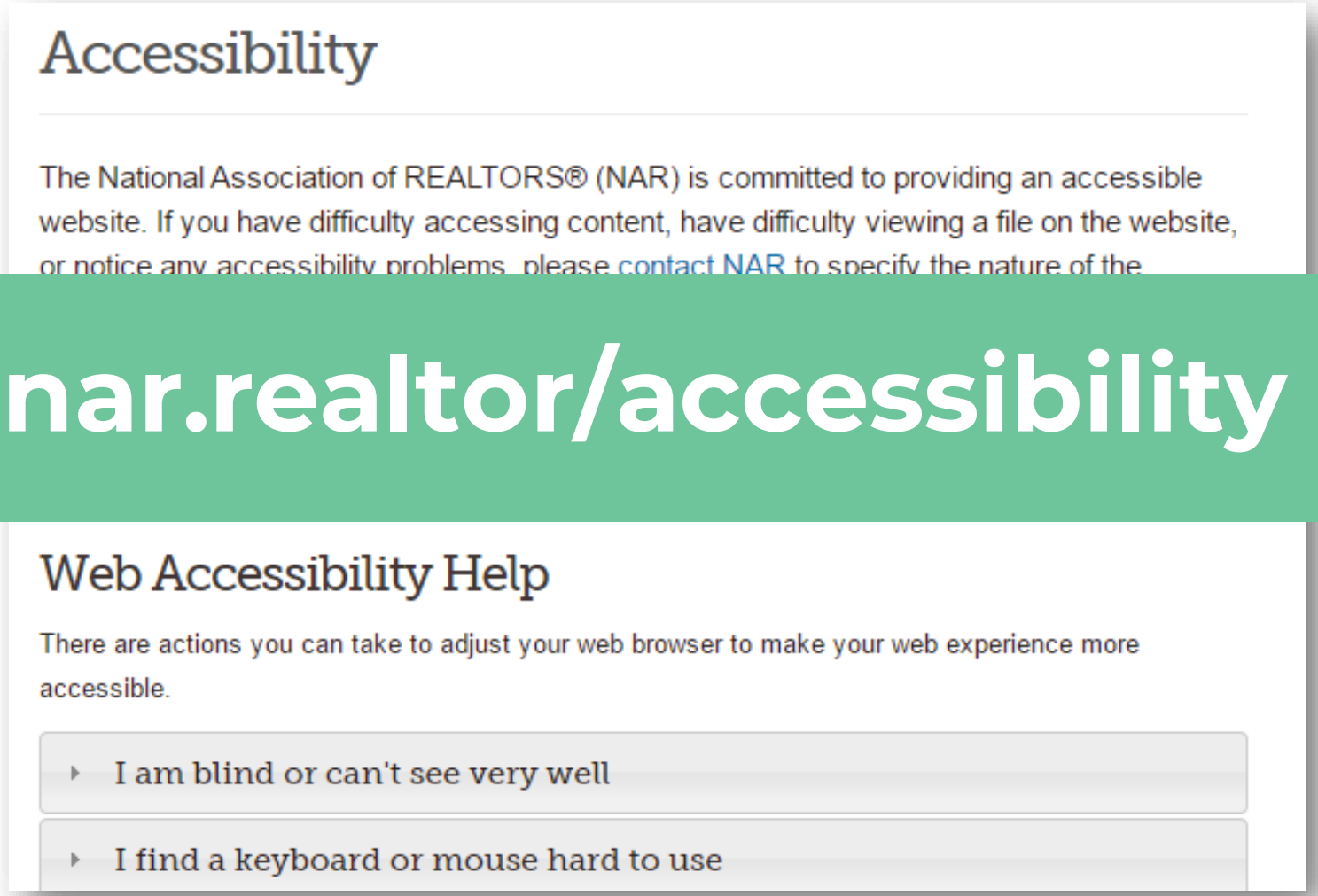
BEST PRACTICES

- ✓ Do not wait for DOJ guidance.
- ✓ Use WCAG 2.1 guidelines.
- ✓ Conduct accessibility audit and create plan.
- ✓ Understand applicable state law.
- ✓ Include a disclaimer page on your website.

BEST PRACTICES



nar.realtor/accessibility

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EQUAL PROFESSIONAL SERVICES FOR ALL

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projects.newsday.com/long-island/real-estate-agents-investigation/

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Newsday

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HIDDEN CAMERA VIDEO

"I don't want to use the word 'steer'."

Agent Rosemarie Marando
speaking to white tester

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Fair Housing Act

Protects people from discrimination in all aspects related to housing:
renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.

Prohibits Discrimination based on:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability

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Fair Housing Laws

Prohibited Conduct

- Refusal to Sell or Rent
- Steering
- Blockbusting

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REALTOR® Code of Ethics

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

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Marketing Best Practices

1. Describe the housing, not the buyer
2. Have a broad marketing plan
3. Include photographs of models of a variety of races
4. Be cautious when “narrowing your audience” with targeted digital advertising

Beware Buyer Love Letters

the mortgage process

How to write a love letter to win over a seller

By Julie Tramonte

February 2019

If you're a first-time homebuyer facing stiff competition in having your offer accepted, it may be time to pull out a secret weapon – a love letter to your seller.

CLEAR COOPERATION POLICY

nar.realtor/about-nar/policies/mls-clear-cooperation-policy

Name Changes, and Mergers

Governing Documents, Models, and Publications

Code of Ethics and Professional Standards

Membership Policy

MLS Policy

Policy Videos

View on YouTube

FREE consumer content
ready to use for your SOCIAL MEDIA, WEBSITE, NEWSLETTER
or other materials.
HouseLogic.com/members GO!
Advertisement

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Keep in Mind

Fair Housing Laws

Be aware of federal, state, and local fair housing laws.

Financial & Reputational Loss

Fair housing violations may results in damage to your business.

Eliminate Discrimination

Create equal opportunities in housing for all individuals.

Insurance Coverage

Sometimes excluded from E & O policies.

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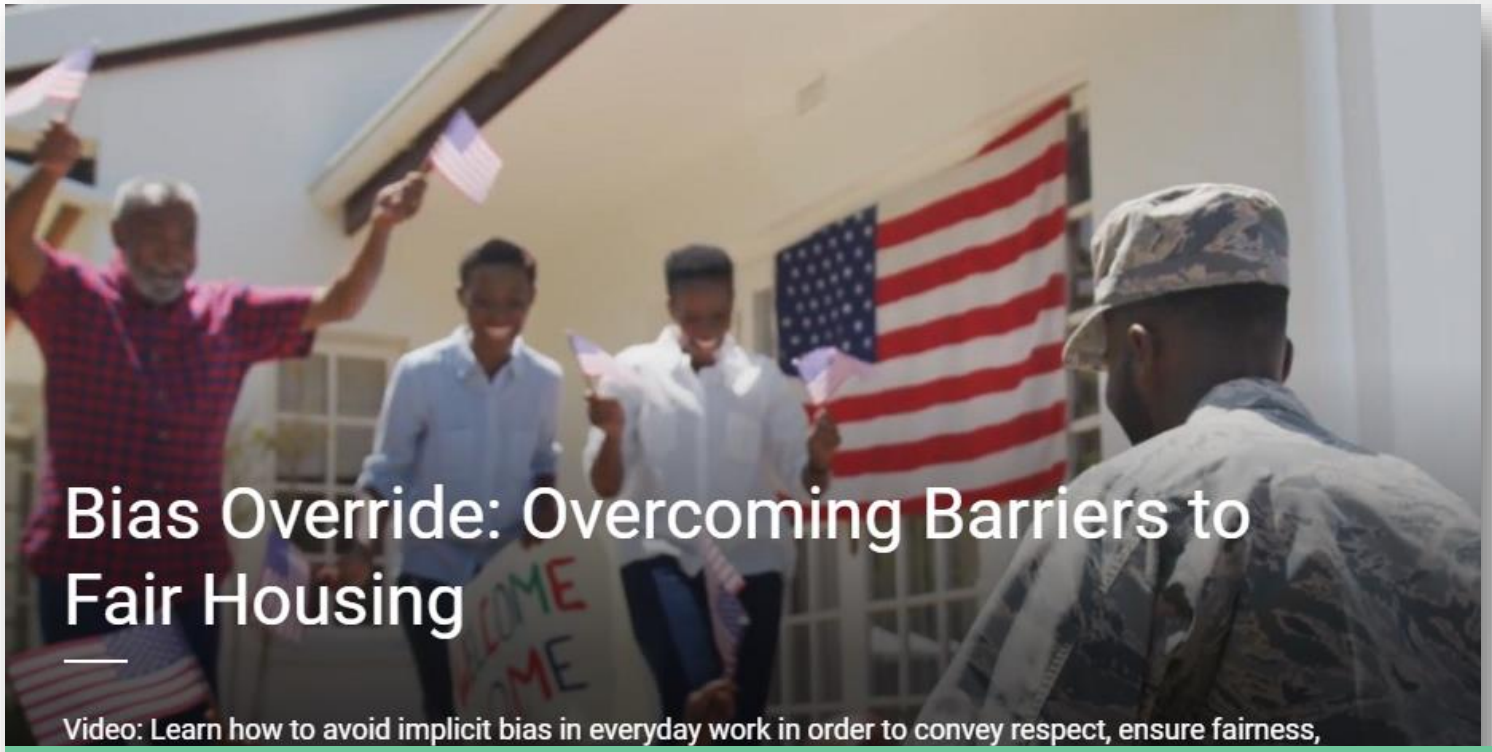
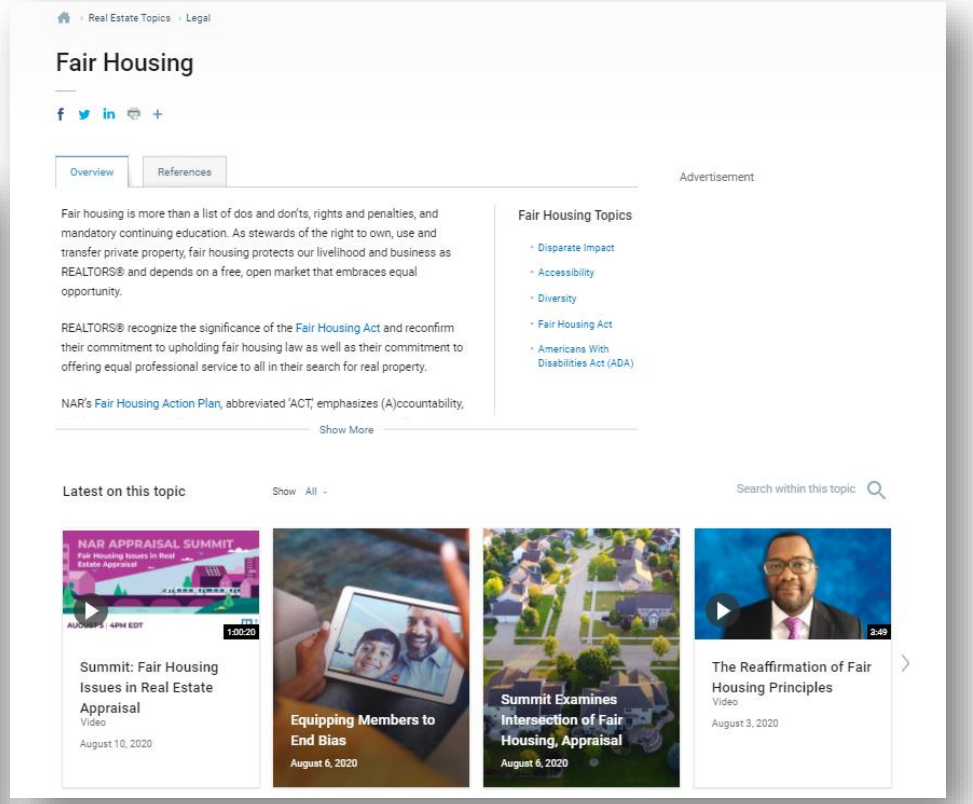
FAIR HOUSING RESOURCES





nar.realtor/fair-housing

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RISK MANAGEMENT

Chapter 6: Fair Housing

Laws & Case Summaries
Equal Services Checklist
Training Module

store.realtor/rebe

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FAIR HOUSING VIDEO

store.realtor

Search: FAIR HOUSING

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LITIGATION UPDATE

NATIONAL ASSOCIATION of REALTORS®

- *Moehrl v. National Association of REALTORS et al.*, Civil Action Nos.:1:19-cv-01610 and 1:19-cv-2544 (N.D. Ill. 2019)
- *Sitzer v. National Association of REALTORS et al.*, Case No. 4:19-cv-00332-SRB (W.D. Mo. 2019)

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Recap: Where we are

- Complaints filed
- Motions to Dismiss filed
- Amended Complaints filed
- Motions to Dismiss filed
- DOJ Statements of Interest
- Motion to Dismiss denied in Missouri
- Discovery proceeds in Missouri

NATIONAL ASSOCIATION OF REALTORS®

Our story

1

REALTORS® are champions of homeownership, property rights and the communities they serve.

2

The MLS system and the way commissions are paid create competitive, efficient markets that benefit home buyers, sellers and small business.

3

Local, expert brokers play a crucial role in helping buyers and sellers achieve their goals.

4

These lawsuits are wrong on the facts, wrong on the economics and wrong on the law.

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CLEAR COOPERATION POLICY LAWSUITS

NATIONAL ASSOCIATION OF REALTORS®

Top Agent Network v. National Association of REALTORS® et al., Case No. 3:20-cv-03198 (N.D. Cal., 2020)

- Filed on May 11, 2020
- California Association of REALTORS® and San Francisco Association of REALTORS® are also named defendants
- Plaintiff asserts that the Clear Cooperation Policy is anticompetitive
- On May 27, 2020, the Court denied Plaintiff's Motion for TRO Injunction
- On June 4, the Plaintiff filed for a preliminary injunction
- Status: Awaiting the court's decision on the preliminary injunction

NATIONAL ASSOCIATION OF REALTORS®

The PLS.com, LLC v. National Association of REALTORS® et al., Case No. 2:20-cv-04790 (C.D. Cal., 2020)

- Filed on May 28, 2020
- California Regional MLS, Midwest Real Estate Data, LLC., and Bright MLS, Inc. are also named defendants
- The Plaintiff asserts that the Clear Cooperation Policy is anticompetitive
- Plaintiff seeks a permanent injunction
- Status: The Complaint response date for all the defendants is July 20, 2020

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Clear Cooperation Policy

- Adopted in November 2019, by the NAR Board of Directors (729-70) to provide crucial protection for consumers.
- Provides greater transparency and competition between real estate listings and between brokers while still addressing privacy concerns.
- Applies to listings that are publicly marketed and has no impact on properties sold exclusively within the listing brokerage.
- Promotes equal opportunity for all and Fair Housing!
- Remains in effect and is not altered in any way by these lawsuits.

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NAR LEGAL RESOURCES

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WHAT WE OFFER

Risk Management

EDUCATION & SUPPORT

Trademark Protection

Litigation Support

Library & Archives

RISK MANAGEMENT

WINDOW TO THE LAW

Monthly Video Series

LINK IN YOUR MEMBER'S EDGE EMAIL!

nar.realtor/window-to-the-law

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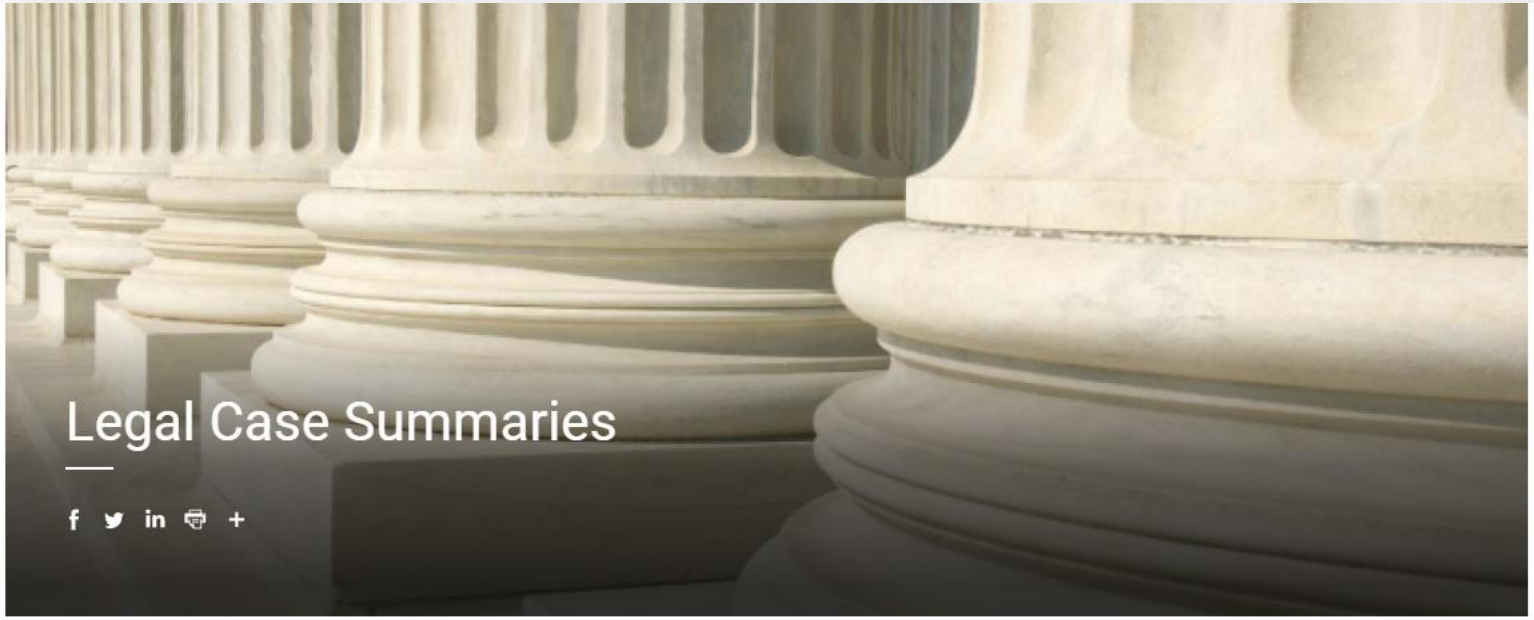
RISK MANAGEMENT



August 20, 2019 Complying With the Americans With Disabilities Act (ADA), Legal

CASE SUMMARIES

State and Federal Courts

nar.realtor/legal-case-summaries

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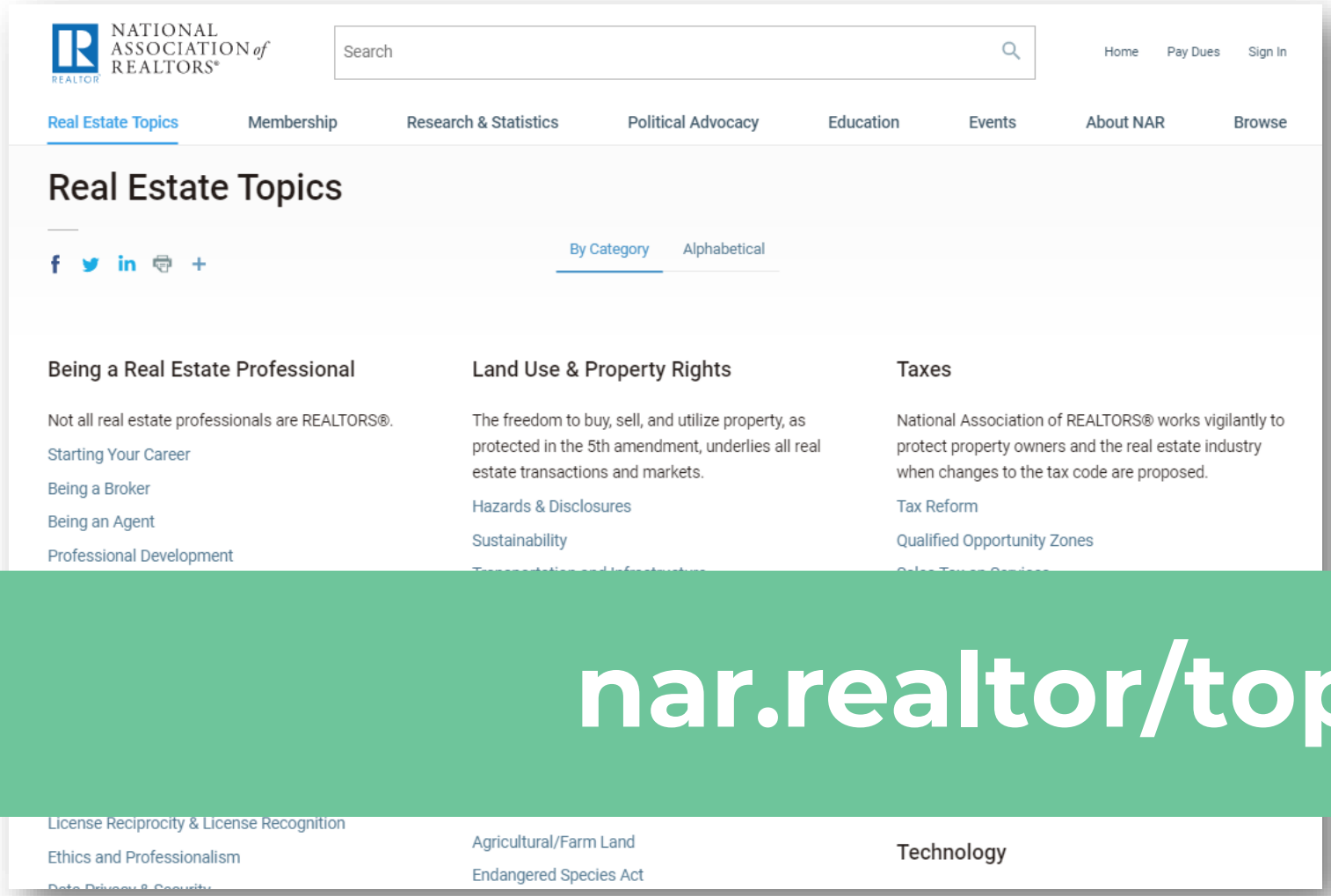
TOPIC PAGES



TOPIC PAGES

From Accessibility to Zoning

nar.realtor/topics

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RISK MANAGEMENT

PUBLICATIONS

Legal Pulse
Hot Topics for Brokers
Sample Photography Agreement
Real Estate Brokerage Essentials

store.realtor/rebe

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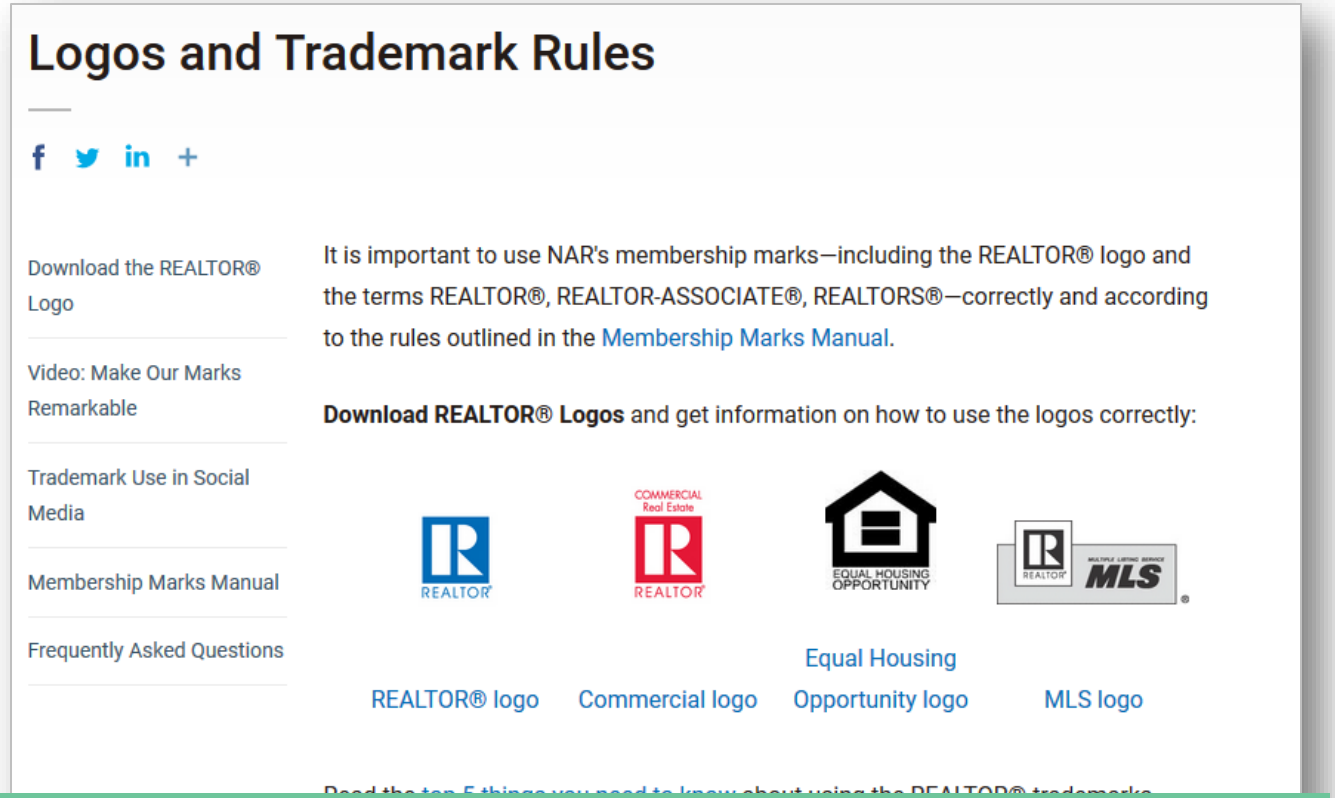
TRADEMARK PROTECTION

REALTOR® LOGOS

And the rules to use them!



nar.realtor/trademark

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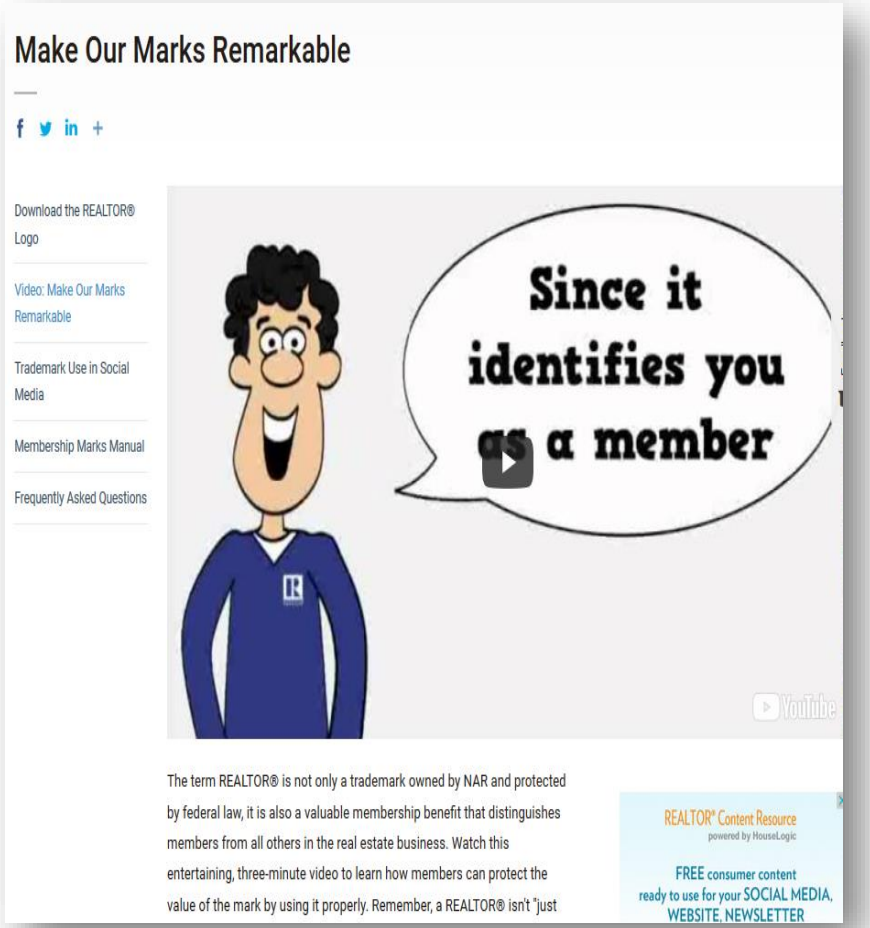
TRADEMARK PROTECTION

Videos

Great for meetings!



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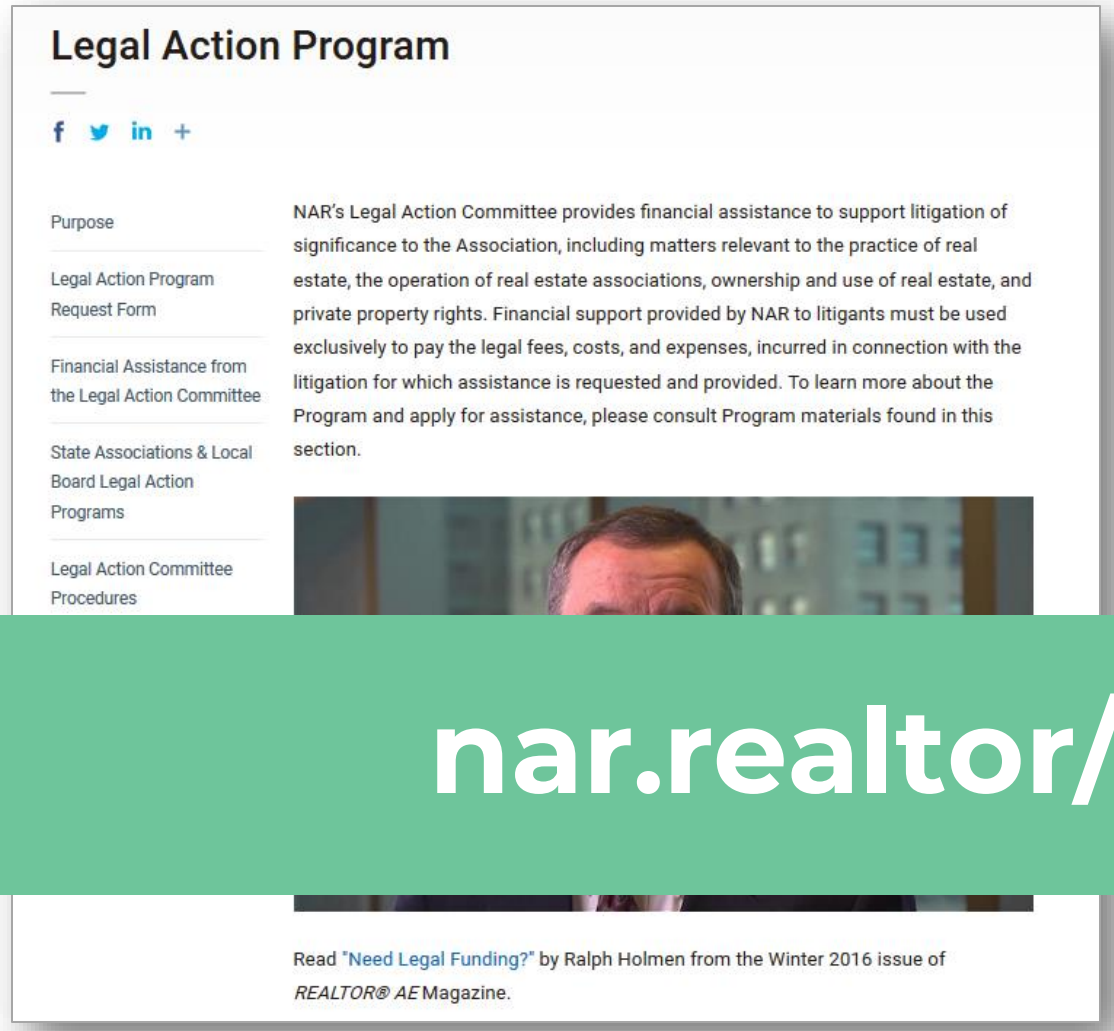
LEGAL ACTION PROGRAM



Legal Action Program

Purpose

Legal Action Program Request Form

Financial Assistance from the Legal Action Committee

State Associations & Local Board Legal Action Programs

Legal Action Committee Procedures

NAR's Legal Action Committee provides financial assistance to support litigation of significance to the Association, including matters relevant to the practice of real estate, the operation of real estate associations, ownership and use of real estate, and private property rights. Financial support provided by NAR to litigants must be used exclusively to pay the legal fees, costs, and expenses, incurred in connection with the litigation for which assistance is requested and provided. To learn more about the Program and apply for assistance, please consult Program materials found in this section.

Read "Need Legal Funding?" by Ralph Holmen from the Winter 2016 issue of *REALTOR® AE* Magazine.

LITIGATION SUPPORT

Financial assistance for court cases that impact the industry

nar.realtor/legal-action

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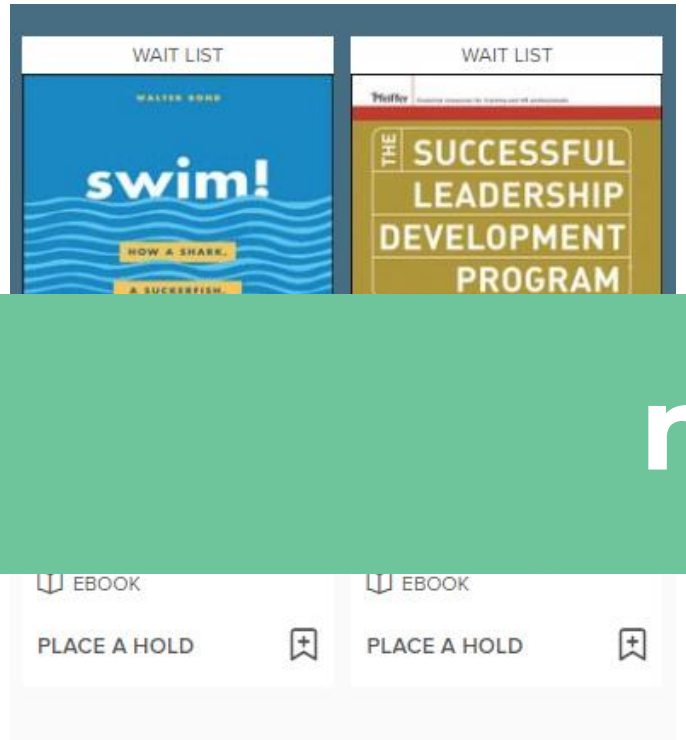
LIBRARY & ARCHIVES



E-books

Business Letter Templates

Magazines/ Newspapers

nar.realtor/library

THANK YOU.

CHLOE HECHT
Senior Counsel and Director of Legal Affairs

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checht@nar.realtor

☎ CALL ME
312-329-8248

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